

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAURA LITINSKY,	X	
		Docket No.: 07-CV-11475(RJS)
Plaintiff,	:	Judge: Sullivan
against	:	
DIAMANTE THE DIAMOND MANUFACTURERS, INC., RAFAEL ZAKARIA, AND THE GEMOLOGICAL INSTITUTE OF AMERICA,	:	
Defendants.	:	
		X

**DECLARATION OF PLAINTIFF LAURA LITINSKY IN SUPPORT OF HER ORDER
TO SHOW CAUSE REQUESTING A TEMPORARY RESTRAINING ORDER AND A
PRELIMINARY INJUNCTION TO PRESERVE THE STATUS QUO**

Laura Litinsky hereby declares as follows under penalty of perjury:

1. I am the Plaintiff in the action herein.
2. I am a resident of the State of Florida.
3. I make this declaration in support of my order to show cause for a temporary restraining order and preliminary injunction, pursuant to Fed. R. Civ. P. 64 and 65 and N.Y.C.P.L.R. § 7109(a), to preserve the status quo pending trial on the merits of my underlying action. I ask that the Court preliminary restrain and enjoin Defendant the Gemological Institute of America (“GIA”) its servants, employees, agents, representatives, and all persons acting in concert with them, from transferring the 5.02 carat oval cut brilliant F-VVS2 diamond subject of GIA Report 12011455 and GIA Report 16434784 (the “Diamond”) to Defendants Diamante The Diamond Manufacturers, Inc. (“Diamante”) and Rafael Zakaria (“Zakaria”), or from removing, transferring, dismantling, selling, pledging or otherwise disposing of the Diamond or permitting

the Diamond to become subject to a security interest or lien.

4. I am fully familiar with all of the facts and circumstances of this action.

5. On September 24, 2003, I purchased the a ring for \$180,000 from Bulgari, 30 rue du Rhone, 1204, Genève, Switzerland (the "Ring"). The Diamond was set within the Ring along with two other diamonds of 0.95 carats. A copy of the sales receipt for the purchase of the Ring and the Diamond is attached to this Declaration as Exhibit 1.

6. When I purchased the Ring and the Diamond, Bulgari presented me with GIA Certificate 12011455, dated May 22, 2002, which attests to the quality and identity of the Diamond. A copy of GIA Certificate 12011455 is attached to this Declaration as Exhibit 2.

7. On November 15, 2007, Bulgari sent me a duplicate copy of the sales receipt for the Ring and the Diamond and a duplicate copy of GIA Certificate 12011455. A copy of Bulgari's November 15, 2007 letter is attached to this Declaration as Exhibit 3.

8. On November 18, 2006, I attended a private party at the Norton Museum of Art, located at 1451 South Olive Avenue, West Palm Beach, Florida. I wore the Ring to the party.

9. When I arrived home after the private party, I discovered that the Diamond was not within its setting in the Ring.

10. The next morning, I contacted the host of the private party, the director of the Norton Museum, the administrative staff of the Norton Museum, the lost and found department of the Norton Museum, the cleaning crew at the Norton Museum and the caterer of the private party to see if they had or could locate the Diamond. No one I contacted was able to locate the Diamond.

11. On December 4, 2006, I reported the Diamond as lost to the West Palm Beach, Florida Police Department. A copy of the West Palm Beach Police Report for the Diamond is

attached to this Declaration as Exhibit 4.

12. I described the Diamond to the police as a 5.02 carat oval Bulgari diamond which was not insured. I also informed the police that the Diamond could be “identified through paperwork and markings” (Ex. 4.) and that I was contacting local pawn shops to see if they have come into possession of the Diamond.

13. On December 20, 2006, I telephoned GIA to report the Diamond lost. I spoke with Joe Graff of GIA.

14. Also on December 20, 2006, I sent Mr. Graff a facsimile letter to report the Diamond lost. A copy of my December 20, 2006 letter to Mr. Graff is attached to this Declaration as Exhibit 5. I included with my facsimile letter a copy of the West Palm Beach Police Report (Ex. 4) and a copy of GIA Certificate 12011455 (Ex. 2).

15. I described the Diamond to Mr. Graff and GIA as a “5.02 Oval Brilliant VVS2/F, Bulgari diamond”. I told Mr. Graff and GIA that the Diamond “fell out of its setting the evening of November 18, 2006” and asked Mr. Graff and GIA to “inform the police if at anytime in the future anyone requests a GIA certificate on this stone.” (Ex. 5.)

16. On or about November 19, 2007, I received a letter from Ivy R. Cutler of GIA. This letter stated that another GIA client had submitted the Diamond to GIA. A copy of GIA’s November 19, 2007 letter is attached to this Declaration as Exhibit 6. The letter asked me to consent to release my contact information to the other GIA client and indicated that GIA would make the same request of the other GIA client.

17. On or about November 27, 2007, I received another letter from Ivy R. Cutler of GIA. This letter stated that Diamante was the other GIA client that submitted the Diamond to GIA. A copy of GIA’s November 27, 2007 letter is attached to this Declaration as Exhibit 7.

The letter also indicated that Diamante and I had competing claims of ownership over the Diamond.

18. The November 27, 2007 letter also indicated that GIA had created a second GIA Certificate for the Diamond, GIA Certificate 16434784.

19. The November 27, 2007 letter stated that if I “d[id] not (a) resolve with Diamante these competing claims or ownership or (b) obtain a directive from law enforcement or an order, from a court having jurisdiction over GIA, directing GIA to hold the [D]iamond or to deliver it to a third-party, then GIA will consider returning the [D]iamond to Diamante – as the party who delivered the diamond to GIA.” (Ex. 7.)

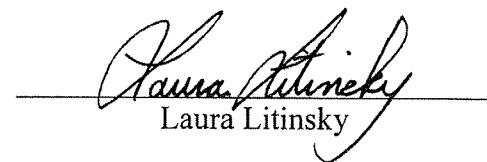
20. Gary Kovacs and Joshua Ruthizer, my counsel and associates with the law firm of Proskauer Rose, attempted to resolve the ownership dispute of the Diamond without litigation but were unsuccessful.

21. My counsel also asked Diamante and Zakaria to enter into a standstill agreement so that the Diamond would not be returned to Diamante and Zakaria until ownership of the Diamond was decided. They were unsuccessful in these attempts as well.

22. No previous application has been made for the relief requested.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Boca Raton, Florida
December 20, 2007


Laura Litinsky

BVLGARI

Mrs. Laura LITINSKY
17052 Brookwood Dr.

BOCA RATON, FL 33496
USA

No. VAT 144477

Geneva, September 24th, 2003

INVOICE

Your purchase of 24th September 2003

RD373 One ring in platinum set with one diamond oval cut (5,02 cts) F-VVS2 and
two tapered baguette diamonds (0,95 cts) F-VVS2

Price (VAT incl.) : USD 180'00.-

SB. Invoice paid.
With our thanks.

BVLGARI SA
30, rue du Rhône - CH-1204 Genève - Tel.: +41 22 317 70 70 - Fax: +41 22 317 70 75
Via Serrus 24 - CH-7500 St. Moritz - Tel.: +41 81 833 72 30 - Fax: +41 81 833 72 05
Bahnhofstrasse 15 - CH-8001 Zürich - Tel.: +41 1 212 53 03 - Fax: +41 1 212 53 04
Administration: 30, rue du Rhône - CH-1204 Genève - Tel.: +41 22 319 06 60 - Fax: +41 22 317 70 75

Nov 16 2007 12:41PM BRUSA HIGH JEWELRY

212-974-2296

p.1

BVLGARI

November 15, 2007

Dear Mrs. Letinsky,

Attached you will find a copy of the sales receipt for your purchase of our ring reference, RD373, that took place in the Bulgari Geneva shop in 2003. A copy of the GIA certificate is also enclosed for this diamond ring and it is described as such: oval cut 5.02cts. F VVS2 and its certificate is GIA certificate# 12011455.

Sincerely,



Carmen Damiani
Bulgari Retail USA

BVLGARI RETAIL USA SH

730 Fifth Avenue, New York, NY 10019 • Tel. (212) 315-9700 • Fax. (212) 957-6478
Corporate Offices (212) 315-9700 • Fax: (212) 767-0167

NEW YORK • BEVERLY HILLS • ARDEN • SAN FRANCISCO • BAY HARBOUR • LAS VEGAS • SOUTH COAST PLAZA • CHICAGO • HONOLULU • PALM BEACH • HOUSTON

Nov 15 06 03:27p

West Palm Beach P D

561 653-2829

p.2

User: DKAPPER

WEST PALM BEACH

12/04/06 08:54:22

Event ID: 06-00160815

Call Ref #: 643

Event Report

Date/Time Received: 12/04/06 08:19:48

Rpt#:	Call Source: PHONE	Prime DPR1 Unit: KAPPER, DENISE	Services Involved				
Location: 1451 S OLIVE AVE			LAW				

X-ST: DIANA PL
ACTAEON PL

Jur: CAD Service: LAW Agency: WPB

Business: NORTON MUSEUM OF ART

St/Beat: 4 District: D2 RA: S2

Nature: LOST OR FOUND PROPERTY

Phone: (561) 832-5196

Alarm Lvl: 1 Priority: 4 Medical Priority:

Reclassified Nature:

Caller: LAURA

Addr: 1451 S OLIVE AVE

Phone: [REDACTED] Alarm:

Alarm Type:

Vehicle #: St: Report Only: No Race: Sex: Age:

Call Taker: MMACKEY

Console: EYE

Geo-Verified Addr.: Yes Nature Summary Code: Disposition: CAD Close Comments:

Notes: ON THIS DATE, I SPOKE WITH LAURA LITINSKY, BY PHONE. LITINSKY REPORTED THE LOSS OF A 5.02 OVAL DIAMOND, THAT FELL OUT OF HER RING, ON 11-18-06, BETWEEN 2100 - 2300. THE INCIDENT OCCURRED AT 1451 S OLIVE AVE - NORTON MUSEUM OF ART, DURING A DINNER PARTY. THE DISCOVERY WAS MADE WHEN LITINSKY ARRIVED HOME. THE DIAMOND WAS DESCRIBED AS A "bulgari", and was valued at \$125,000.00. THE RING WAS NOT INSURED. LITINSKY WILL CALL AROUND TO LOCAL PAWN SHOPS TO ASCERTAIN IF IT WAS TURNED IN, BECAUSE THE DIAMOND CAN BE IDENTIFIED THROUGH PAPERWORK AND MARKINGS. THE CAD # WAS ISSUED.

LAURIA LITINSKY WF 10051949
17052 BROOKWOOD DR
BOCA RATON, FL 33496

[REDACTED] [12/04/06 08:53:48 DKAPPER]
ADV SGT COPPIN OF CALL HOLDING VIA RADIO. [12/04/06 08:34:29 KGASKIN]
ALT # [REDACTED]. REF TO LOSING A DIAMOND FROM HER RING... [12/04/06 08:21:30 MMACKEY]

Call Received:	Time From Call Received	Unit Reaction:	(1st Dispatch to 1st Arrive)
Call Routed: 12/04/06 08:21:45	000:01:57	En-Route:	(1st Dispatch to 1st En-Route)
Call Take Finished: 12/04/06 08:21:45	000:01:57	On-Scene:	(1st Arrive to Last Clear)
1st Dispatch: 12/04/06 08:41:32	000:21:44 (Time Held)		
1st En-Route:	:		
1st Arrive:	:		
Last Clear: 12/04/06 08:54:13	000:34:25	(Reaction Time)	

Unit	Empl ID	Type	Description	Time Stamp	Radio Log Comments	Close Code	User
DPR1	01168	D	Dispatched	12/04/06 08:41:32	Stat/Beat: CITY		DKAPPE
DPR1	01168	C	Cleared	12/04/06 08:54:13		CAD	DKAPPE

December 20, 2006

Mr. Joe Graff
GIA
5355 Armada Drive
Carlsbad, CA 92008-4699

Dear Sir:

I spoke with you this morning to report a lost stone. As you requested I am faxing a copy of the police report from West Palm Beach, Florida and a copy of the GIA certificate along with this letter.

The 5.02 Oval Brilliant, VVS2/F, Bulgari diamond fell out of its setting the evening of November 18th, 2006.

Please inform the police if at anytime in the future anyone requests a GIA certificate on this stone. You can reach me at my home, 17052 Brookwood Drive, Boca Raton, FL 33496; Tel [REDACTED]; Fax [REDACTED]

Should this occur many years from now, you can always reach us through my husband's office. Delray Eye Associates, 16201 S. Military Trail, Delray Beach, FL 33484, Tel 561 498 8100.

I appreciate your assistance. I would be overjoyed if my beloved diamond turns up someday.

Thank you.

Sincerely,

Laura Litinsky



GIA
GEMOLOGICAL INSTITUTE OF AMERICA®
Laboratory

New York Headquarters
580 Fifth Avenue Suite 200 | New York, NY 10036-4754
T: 212-221-5858 | F: 212-575-3095
Carlsbad
5355 Armada Drive | Carlsbad, CA 92008-4699
T: 760-603-4500 | F: 760-603-1814
www.gia.edu

November 19, 2007

VIA First Class Mail & Fax

Mrs. Laura Litinsky
17052 Brookwood Drive
Boca Raton, Florida 33496
561-483-4106 Fax

Re: 5.02 Carat Oval Brilliant Diamond GIA Report 12011455

Dear Mrs. Litinsky,

GIA has received notice from (Laura Litinsky) a claim of ownership with respect to the above referenced diamond (the "Diamond"), which was submitted to GIA by another GIA client (the "Submitting Client"), which also claims to be the rightful owner of the Diamond.

In an effort to facilitate resolution of these competing claims of ownership, we hereby request (Laura Litinsky) consent to disclose to the Submitting Client, Laura Litinsky's identity and contact information. We are requesting similar permission from the Submitting Client.

Please confirm your consent to the foregoing by countersigning and returning to us a copy of this letter. Thank you.

Sincerely,
GIA Laboratory


R. Cutler GG
Records Department
212-221-5858 ext. 3539
212-997-7661 Fax

CONSENTED TO THIS ____ DAY OF (November, 2007)

BY: _____
Mrs. Laura Litinsky



GIA
GEMOLOGICAL INSTITUTE OF AMERICA®
Laboratory

New York Headquarters 580 Fifth Avenue Suite 200 New York, NY 10036-4794 T: 212-221-5858 F: 212-575-3095	Carlsbad 5355 Armada Drive Carlsbad, CA 92008-4699 T: 760-603-4500 F: 760-603-1814 www.gia.edu
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November 27, 2007

VIA First Class Mail

Mrs. Laura Litinsky
17052 Brookwood Drive
Boca Raton, Florida 33496

Mr. Rafael Zakaria, President
Diamante
550 South Hill Street # 1260
Los Angeles, California 90013

Re: 5.02 Carat Oval Brilliant Diamond
GIA Report 12011455 & GIA Report 16434784

Dear Ms. Litinsky & Mr. Zakaria,

GIA has received from each of you (Mr. Zakaria on behalf of Diamante), competing claims of ownership with respect to the above referenced diamond (the "Diamond"), which was submitted to GIA by Diamante but for which Ms. Litinsky also claims to be rightful owner. Further to your respective consents to exchange contact information, set forth above is the respective contact information for each of you.

Please be advised that if within thirty (30) days from the date of this letter, Ms. Litinsky, does not (a) resolve with Diamante these competing claims of ownership, or (b) obtain a directive from law enforcement or an order, from a court having jurisdiction over GIA, directing GIA to hold the diamond or to deliver it to a third-party, then GIA will consider returning the diamond to Diamante – as the party who delivered the diamond to GIA.

Please be guided accordingly.

If either of you wishes to discuss this matter please contact us.

Sincerely,
GIA Laboratory

Ivy R. Cutler GG
Records Department
212-221-5858 ext. 3539
212-997-7661 Fax

Cc Todd B. Marcus, Esq.
Gary Kovacs, Esq.
Ruben Yoshelme, Esq.